

105TH CONGRESS  
2D SESSION

# H. R. 4686

To amend titles XI, XVIII, and XIX of the Social Security Act to permit paid staff other than nurse aides and licensed health professionals to provide feeding and hydration assistance to residents in nursing facilities participating in the Medicare and Medicaid Programs (and to provide special training requirements for such staff), and to establish a program to ensure that such facilities do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 1998

Mr. KENNEDY of Massachusetts (for himself, Mr. BARRETT of Wisconsin, Mr. HASTINGS of Florida, Mr. COSTELLO, Mr. FILNER, Mr. WAXMAN, Ms. KILPATRICK, Mr. STARK, Mr. KENNEDY of Rhode Island, Mr. NEAL of Massachusetts, Ms. SLAUGHTER, Mr. SANDLIN, Mr. UNDERWOOD, Mr. MEEHAN, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend titles XI, XVIII, and XIX of the Social Security Act to permit paid staff other than nurse aides and licensed health professionals to provide feeding and hydration assistance to residents in nursing facilities participating in the Medicare and Medicaid Programs (and to provide special training requirements for such staff), and to establish a program to ensure that such facilities

do not employ individuals who have a history of patient or resident abuse or have been convicted of certain crimes.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*  
 3       That this Act may be cited as the “Long-Term Care Pa-  
 4       tient Protection Act of 1998”.

5       **SEC. 2. SPECIAL REQUIREMENTS FOR INDIVIDUALS PRO-**  
 6                       **VIDING FEEDING AND HYDRATION ASSIST-**  
 7                       **ANCE TO NURSING FACILITY RESIDENTS AND**  
 8                       **SKILLED NURSING FACILITY PATIENTS.**

9       (a) MEDICAID PROGRAM.—Section 1919 of the Social  
 10      Security Act is amended—

11               (1) in subsection (b)—

12                       (A) in paragraph (5)(F)—

13                               (i) by striking the period and insert-  
 14                               ing “, or”; and

15                               (ii) by adding at the end the following  
 16                               new clause:

17                                       “(iii) who is described in paragraph  
 18                                       (8)(B).”; and

19                               (B) by adding at the end the following new  
 20                               paragraph:

21                       “(8) REQUIRED TRAINING OF FEEDING AND  
 22                       HYDRATION ASSISTANTS.—

“(A) IN GENERAL.—A nursing facility must not use on a full-time or other paid basis any individual as a feeding and hydration assistant in the facility unless the individual—

“(i) has completed a feeding and hydration assistance training and competency evaluation program approved by the State under subsection (e)(8), and

“(ii) is competent to provide feeding and hydration services.

“(B) FEEDING AND HYDRATION ASSISTANT DEFINED.—In this paragraph, the term ‘feeding and hydration assistant’ means any individual who assists residents in a nursing facility to eat or drink but does not otherwise provide any nursing or nursing-related services to such residents, but does not include an individual—

“(i) who is a licensed health professional (as defined in paragraph (5)(G)) or a registered dietician,

“(ii) who volunteers to provide such services without monetary compensation, or

1 “(iii) who is a nurse aide (as defined  
2 in paragraph (5)(F)).”;

3 (2) in subsection (e), by adding at the end the  
4 following new paragraph:

5 “(8) SPECIFICATION AND REVIEW OF FEEDING  
6 AND HYDRATION ASSISTANCE TRAINING AND COM-  
7 PETENCY EVALUATION PROGRAMS.—The State  
8 must—

9 “(A) specify those training and competency  
10 evaluation programs that the State approves for  
11 purposes of subsection (b)(8) and that meet the  
12 requirements established under subsection  
13 (f)(10), which shall at a minimum include  
14 training concerning—

15 “(i) recommended amounts of food  
16 and hydration,

17 “(ii) methods of providing food and  
18 hydration, and

19 “(iii) recognition of symptoms of mal-  
20 nutrition and dehydration; and

21 “(B) provide for the review and reapproval  
22 of such programs, at a frequency and using a  
23 methodology consistent with the requirements  
24 established under subsection (f)(10)(B).

1 The failure of the Secretary to establish require-  
2 ments under subsection (f)(10) shall not relieve any  
3 State of its responsibility under this paragraph.”;  
4 and

5 (3) in subsection (f), by adding at the end the  
6 following new paragraph:

7 “(10) REQUIREMENTS FOR FEEDING AND HY-  
8 DRATION ASSISTANCE TRAINING AND EVALUATION  
9 PROGRAMS.—For purposes of subsections (b)(8) and  
10 (e)(8), the Secretary shall establish—

11 “(A) requirements for the approval of feed-  
12 ing and hydration assistance training and com-  
13 petency evaluation programs; and

14 “(B) requirements respecting the minimum  
15 frequency and methodology to be used by a  
16 State in reviewing such programs’ compliance  
17 with the requirements for such programs.”.

18 (b) MEDICARE PROGRAM.—Section 1819 of such Act  
19 is amended—

20 (1) in subsection (b)—

21 (A) in paragraph (5)(F)—

22 (i) by striking “or” at the end of  
23 clause (i);

24 (ii) by striking the period at the end  
25 of clause (ii) and inserting “, or”; and

1 (iii) by adding at the end the follow-  
 2 ing new clause:

3 “(iii) who is described in paragraph  
 4 (8)(B).”; and

5 (B) by adding at the end the following new  
 6 paragraph:

7 “(8) REQUIRED TRAINING OF FEEDING AND  
 8 HYDRATION ASSISTANTS.—

9 “(A) IN GENERAL.—A skilled nursing fa-  
 10 cility must not use on a full-time or other paid  
 11 basis any individual as a feeding and hydration  
 12 assistant in the facility unless the individual—

13 “(i) has completed a feeding and hy-  
 14 dration assistance training and competency  
 15 evaluation program approved by the State  
 16 under subsection (e)(6), and

17 “(ii) is competent to provide feeding  
 18 and hydration services.

19 “(B) FEEDING AND HYDRATION ASSIST-  
 20 ANT DEFINED.—In this paragraph, the term  
 21 ‘feeding and hydration assistant’ means any in-  
 22 dividual that assists residents in a skilled nurs-  
 23 ing facility to eat or drink but does not other-  
 24 wise provide any nursing or nursing-related

1 services to such residents, but does not include  
2 an individual—

3 “(i) who is a licensed health profes-  
4 sional (as defined in paragraph (5)(G)) or  
5 a registered dietician,

6 “(ii) who volunteers to provide such  
7 services without monetary compensation,  
8 or

9 “(iii) who is a nurse aide (as defined  
10 in paragraph (5)(F)).”;

11 (2) in subsection (e), by adding at the end the  
12 following new paragraph:

13 “(6) SPECIFICATION AND REVIEW OF FEEDING  
14 AND HYDRATION ASSISTANCE TRAINING AND COM-  
15 PETENCY EVALUATION PROGRAMS.—The State  
16 must—

17 “(A) specify those training and competency  
18 evaluation programs that the State approves for  
19 purposes of subsection (b)(8) and that meet the  
20 requirements established under subsection  
21 (f)(8), which shall at a minimum include train-  
22 ing concerning—

23 “(i) recommended amounts of food  
24 and hydration,

1 “(ii) methods of providing food and  
2 hydration, and

3 “(iii) recognition of symptoms of mal-  
4 nutrition and dehydration; and

5 “(B) provide for the review and reapproval  
6 of such programs, at a frequency and using a  
7 methodology consistent with the requirements  
8 established under subsection (f)(8)(B).

9 The failure of the Secretary to establish require-  
10 ments under subsection (f)(8) shall not relieve any  
11 State of its responsibility under this paragraph.”;  
12 and

13 (3) in subsection (f), by adding at the end the  
14 following new paragraph:

15 “(8) REQUIREMENTS FOR FEEDING AND HY-  
16 DRATION ASSISTANCE TRAINING AND EVALUATION  
17 PROGRAMS.—For purposes of subsections (b)(8) and  
18 (e)(6), the Secretary shall establish—

19 “(A) requirements for the approval of feed-  
20 ing and hydration assistance training and com-  
21 petency evaluation programs; and

22 “(B) requirements respecting the minimum  
23 frequency and methodology to be used by a  
24 State in reviewing such programs’ compliance  
25 with the requirements for such programs.”.



1 **SEC. 3. ESTABLISHMENT OF PROGRAM TO PREVENT ABUSE**  
2 **OF NURSING FACILITY RESIDENTS.**

3 (a) NURSING FACILITY AND SKILLED NURSING FA-  
4 CILITY REQUIREMENTS.—

5 (1) MEDICAID PROGRAM.—Section 1919(b), as  
6 amended by section 2(a), is amended by adding after  
7 paragraph (8) the following new paragraph:

8 “(9) SCREENING OF NURSING FACILITY WORK-  
9 ERS.—

10 “(A) BACKGROUND CHECKS ON APPLI-  
11 CANTS.—Subject to subparagraph (B)(ii), be-  
12 fore hiring an individual, a nursing facility  
13 shall—

14 “(i) give the individual written notice  
15 that the facility is required to perform  
16 background checks with respect to appli-  
17 cants;

18 “(ii) require, as a condition of employ-  
19 ment, that such individual—

20 “(I) provide a written statement  
21 disclosing any conviction for a rel-  
22 evant crime or finding of patient or  
23 resident abuse;

24 “(II) provide a statement signed  
25 by the individual authorizing the facil-

1           ity to request the search and exchange  
2           of criminal records;

3                   “(III) provide in person a copy of  
4           the individual’s fingerprints; and

5                   “(IV) provide any other identi-  
6           fication information the Secretary  
7           may specify in regulation;

8                   “(iii) initiate a check of the registry  
9           under section 1128F in accordance with  
10          regulations promulgated by the Secretary  
11          to determine whether such registry con-  
12          tains any disqualifying information with  
13          respect to such individual; and

14                  “(iv) if such registry does not contain  
15          any such disqualifying information—

16                   “(I) request that the State initi-  
17          ate a State and national criminal  
18          background check on such individual  
19          in accordance with the provisions of  
20          subsection (e)(9); and

21                   “(II) furnish to the State the in-  
22          formation described in subclauses (II)  
23          through (IV) of clause (ii) not more  
24          than 7 days (excluding Saturdays,  
25          Sundays, and legal public holidays

1 under section 6103(a) of title 5,  
2 United States Code) after completion  
3 of the check against the registry initi-  
4 ated under clause (iii).

5 “(B) PROHIBITION ON HIRING OF ABUSIVE  
6 WORKERS.—

7 “(i) IN GENERAL.—A nursing facility  
8 may not knowingly employ any individual  
9 who has any conviction for a relevant  
10 crime or with respect to whom a finding of  
11 patient or resident abuse has been made.

12 “(ii) PROBATIONARY EMPLOYMENT.—  
13 After complying with the requirements of  
14 clauses (i), (ii), and (iii) of subparagraph  
15 (A), a nursing facility may provide for a  
16 probationary period of employment (not to  
17 exceed 90 days) for an individual pending  
18 completion of the check against the reg-  
19 istry described under subparagraph (A)(iii)  
20 and the background check described under  
21 subparagraph (A)(iv). Such facility shall  
22 maintain supervision of the individual dur-  
23 ing the individual’s probationary period of  
24 employment.

1           “(C)   REPORTING    REQUIREMENTS.—A  
2           nursing facility shall report to the State any in-  
3           stance, in which the facility determines that an  
4           individual has committed an act of resident ne-  
5           glect or abuse or misappropriation of resident  
6           property in the course of employment by the fa-  
7           cility.

8           “(D) USE OF INFORMATION.—

9           “(i) IN GENERAL.—A nursing facility  
10          that obtains information about an individ-  
11          ual pursuant to clauses (iii) and (iv) of  
12          subparagraph (A) may use such informa-  
13          tion only for the purpose of determining  
14          the suitability of the individual for employ-  
15          ment.

16          “(ii) IMMUNITY FROM LIABILITY.—A  
17          nursing facility that, in denying employ-  
18          ment for an applicant, reasonably relies  
19          upon information about an individual pro-  
20          vided by the State pursuant to subsection  
21          (e)(9) shall not be liable in any action  
22          brought by the individual based on the em-  
23          ployment determination resulting from the  
24          incompleteness or inaccuracy of the infor-  
25          mation.

1 “(iii) CRIMINAL PENALTY.—Whoever  
2 knowingly violates the provisions of sub-  
3 paragraph (D)(i) shall be fined in accord-  
4 ance with title 18, United States Code, im-  
5 prisoned for not more than 2 years, or  
6 both.

7 “(E) DEFINITIONS.—As used in this para-  
8 graph—

9 “(i) the term ‘conviction for a relevant  
10 crime’ means any State or Federal crimi-  
11 nal conviction for—

12 “(I) any offense described in  
13 paragraphs (1) through (4) of section  
14 1128(a); and

15 “(II) such other types of offenses  
16 as the Secretary may specify in regu-  
17 lations;

18 “(ii) the term ‘finding of patient or  
19 resident abuse’ means any substantiated  
20 finding by a State agency under subsection  
21 (g)(1)(C) or a Federal agency that an indi-  
22 vidual has committed—

23 “(I) an act of patient or resident  
24 abuse or neglect or a misappropriation  
25 of patient or resident property; or

1 “(II) such other types of acts as  
2 the Secretary may specify in regula-  
3 tions; and

4 “(iii) the term ‘disqualifying informa-  
5 tion’ means information about a conviction  
6 for a relevant crime or a finding of patient  
7 or resident abuse.”.

8 (2) MEDICARE PROGRAM.—Section 1819(b), as  
9 amended by section 2(b), is amended by adding after  
10 paragraph (8) the following new paragraph:

11 “(9) SCREENING OF NURSING FACILITY WORK-  
12 ERS.—

13 “(A) BACKGROUND CHECKS ON APPLI-  
14 CANTS.—Subject to subparagraph (B)(ii), be-  
15 fore hiring an individual, a skilled nursing facil-  
16 ity shall—

17 “(i) give the individual written notice  
18 that the facility is required to perform  
19 background checks with respect to appli-  
20 cants;

21 “(ii) require, as a condition of employ-  
22 ment, that such individual—

23 “(I) provide a written statement  
24 disclosing any conviction for a rel-

1           evant crime or finding of patient or  
2           resident abuse;

3                   “(II) provide a statement signed  
4           by the individual authorizing the facil-  
5           ity to request the search and exchange  
6           of criminal records;

7                   “(III) provide in person a copy of  
8           the individual’s fingerprints; and

9                   “(IV) provide any other identi-  
10          fication information the Secretary  
11          may specify in regulation;

12                   “(iii) initiate a check of the registry  
13          under section 1128F in accordance with  
14          regulations promulgated by the Secretary  
15          to determine whether such registry con-  
16          tains any disqualifying information with  
17          respect to such individual; and

18                   “(iv) if such registry does not contain  
19          any such disqualifying information—

20                   “(I) request that the State initi-  
21          ate a State and national criminal  
22          background check on such individual  
23          in accordance with the provisions of  
24          subsection (e)(7); and

1 “(II) furnish to the State the in-  
2 formation described in subclauses (II)  
3 through (IV) of clause (ii) not more  
4 than 7 days (excluding Saturdays,  
5 Sundays, and legal public holidays  
6 under section 6103(a) of title 5,  
7 United States Code) after completion  
8 of the check against the registry initi-  
9 ated under clause (iii).

10 “(B) PROHIBITION ON HIRING OF ABUSIVE  
11 WORKERS.—

12 “(i) IN GENERAL.—A skilled nursing  
13 facility may not knowingly employ any in-  
14 dividual who has any conviction for a rel-  
15 evant crime or with respect to whom a  
16 finding of patient or resident abuse has  
17 been made.

18 “(ii) PROBATIONARY EMPLOYMENT.—  
19 After complying with the requirements of  
20 clauses (i), (ii), and (iii) of subparagraph  
21 (A), a skilled nursing facility may provide  
22 for a probationary period of employment  
23 (not to exceed 90 days) for an individual  
24 pending completion of the check against  
25 the registry described under subparagraph



1 (A)(iii) and the background check de-  
2 scribed under subparagraph (A)(iv). Such  
3 facility shall maintain supervision of the  
4 individual during the individuals's proba-  
5 tionary period of employment.

6 “(C) REPORTING REQUIREMENTS.—A  
7 skilled nursing facility shall report to the State  
8 any instance in which the facility determines  
9 that an individual has committed an act of resi-  
10 dent neglect or abuse or misappropriation of  
11 resident property in the course of employment  
12 by the facility.

13 “(D) USE OF INFORMATION.—

14 “(i) IN GENERAL.—A skilled nursing  
15 facility that obtains information about an  
16 individual pursuant to clauses (iii) and (iv)  
17 of subparagraph (A) may use such infor-  
18 mation only for the purpose of determining  
19 the suitability of the individual for employ-  
20 ment.

21 “(ii) IMMUNITY FROM LIABILITY.—A  
22 skilled nursing facility that, denying em-  
23 ployment for an applicant, reasonably re-  
24 lies upon information about an individual  
25 provided by the State pursuant to sub-

1 section (e)(9) shall not be liable in any ac-  
2 tion brought by the individual based on the  
3 employment determination resulting from  
4 the incompleteness or inaccuracy of the in-  
5 formation.

6 “(iii) CRIMINAL PENALTY.—Whoever  
7 knowingly violates the provisions of sub-  
8 paragraph (D)(i) shall be fined in accord-  
9 ance with title 18, United States Code, im-  
10 prisoned for not more than 2 years, or  
11 both.

12 “(E) DEFINITIONS.—As used in this para-  
13 graph—

14 “(i) the term ‘conviction for a relevant  
15 crime’ means any State or Federal crimi-  
16 nal conviction for—

17 “(I) any offense described in  
18 paragraphs (1) through (4) of section  
19 1128(a); and

20 “(II) such other types of offenses  
21 as the Secretary may specify in regu-  
22 lations;

23 “(ii) the term ‘finding of patient or  
24 resident abuse’ means any substantiated  
25 finding by a State agency under subsection

(g)(1)(C) or a Federal agency that an individual has committed—

“(I) an act of patient or resident abuse or neglect or a misappropriation of patient or resident property; or

“(II) such other types of acts as the Secretary may specify in regulations; and

“(iii) the term ‘disqualifying information’ means information about a conviction for a relevant crime or a finding of patient or resident abuse.”.

(b) STATE REQUIREMENTS.—

(1) MEDICAID PROGRAM.—

(A) EXPANSION OF STATE REGISTRY TO COLLECT INFORMATION ABOUT NURSING FACILITY EMPLOYEES OTHER THAN NURSE AIDES.—

Section 1919, as amended by section 2(a), is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking “NURSE AIDE REGISTRY” and inserting “NURSING FACILITY EMPLOYEE REGISTER”;

(II) in subparagraph (A)—

1 (aa) by striking “By not  
2 later than January 1, 1989, the”  
3 and inserting “The”;

4 (bb) by striking “a registry  
5 of all individuals” and inserting  
6 “a registry of (I) all individuals”;  
7 and

8 (cc) by inserting before the  
9 period “, and (II) all other nurs-  
10 ing facility employees with re-  
11 spect to whom the State has  
12 made a finding described in sub-  
13 paragraph (B)”;

14 (III) in subparagraph (B), by  
15 striking “involving an individual listed  
16 in the registry” and inserting “involv-  
17 ing a nursing facility employee”; and

18 (IV) in subparagraph (C), by  
19 striking “nurse aide” and inserting  
20 “nursing facility employee or appli-  
21 cant for employment”; and

22 (ii) in subsection (g)(1)—

23 (I) in subparagraph (C)—

24 (aa) in the first sentence, by  
25 striking “nurse aide” and insert-

ing “nursing facility employee”;  
and

(bb) in the third sentence,  
by striking “nurse aide” each  
place it appears and inserting  
“nursing facility employee”; and

(II) in subparagraph (D), by  
striking “nurse aide” each place it ap-  
pears and inserting “nursing facility  
employee”.

(B) STATE AND FEDERAL REQUIREMENT  
TO CONDUCT BACKGROUND CHECKS.—Section  
1919(e), as amended by section 2(a), is amend-  
ed by adding at the end the following new para-  
graph:

“(9) STATE AND FEDERAL REQUIREMENTS  
CONCERNING CRIMINAL BACKGROUND CHECKS ON  
NURSING FACILITY EMPLOYEES—

“(A) IN GENERAL.—Upon receipt of a re-  
quest by a nursing facility pursuant to sub-  
section (b)(9) that is accompanied by the infor-  
mation described in subclauses (II) through  
(IV) of subsection (b)(9)(A)(ii), a State, after  
checking appropriate State records and finding  
no disqualifying information (as defined in sub-

1 section (b)(9)(E)), shall submit such request  
2 and information to the Attorney General and  
3 shall request the Attorney General to conduct  
4 a search and exchange of records with respect  
5 to the individual as described in subparagraph  
6 (B).

7 “(B) SEARCH AND EXCHANGE OF  
8 RECORDS BY ATTORNEY GENERAL.—Upon re-  
9 ceipt of a submission pursuant to subparagraph  
10 (A), the Attorney General shall direct a search  
11 of the records of the Federal Bureau of Inves-  
12 tigation for any criminal history records cor-  
13 responding to the fingerprints or other positive  
14 identification information submitted. The Attor-  
15 ney General shall provide any corresponding in-  
16 formation resulting from the search to the  
17 State.

18 “(C) STATE REPORTING OF INFORMATION  
19 TO NURSING FACILITY.—Upon receipt of the in-  
20 formation provided by the Attorney General  
21 pursuant to subparagraph (B), the State  
22 shall—

23 “(i) review the information to deter-  
24 mine whether the individual has any con-

1           viction for a relevant crime (as defined in  
2           subsection (b)(9)(E)); and

3           “(ii) report to the nursing facility the  
4           results of such review.

5           “(D) FEES FOR PERFORMANCE OF CRIMI-  
6           NAL BACKGROUND CHECKS.—

7           “(i) AUTHORITY TO CHARGE FEES.—

8           “(I) ATTORNEY GENERAL.—The  
9           Attorney General may charge a fee to  
10          any State requesting a search and ex-  
11          change of records pursuant to this  
12          paragraph and subsection (b)(9) for  
13          conducting the search and providing  
14          the records. The amount of such fee  
15          shall not exceed the lesser of the ac-  
16          tual cost of such activities or \$50.  
17          Such fees shall be available to the At-  
18          torney General, or, in the Attorney  
19          General’s discretion, to the Federal  
20          Bureau of Investigation, until ex-  
21          pended.

22          “(II) STATE.—A State may  
23          charge a nursing facility a fee for ini-  
24          tiating the criminal background check  
25          under this paragraph and subsection

1 (b)(9), including fees charged by the  
2 Attorney General, and for performing  
3 the review and report required by sub-  
4 paragraph (C). The amount of such  
5 fee shall not exceed the actual cost of  
6 such activities.

7 “(ii) TREATMENT OF FEES FOR PUR-  
8 POSES OF COST REPORTS.—An entity may  
9 not include a fee assessed pursuant to this  
10 subparagraph as an allowable item on a  
11 cost report under this title or title XVIII.

12 “(iii) PROHIBITION ON CHARGING AP-  
13 PPLICANTS OR EMPLOYEES.—An entity may  
14 not impose on an applicant for employment  
15 or an employee any charges relating to the  
16 performance of a background check under  
17 this paragraph.

18 “(E) REGULATIONS.—In addition to the  
19 Secretary’s authority to promulgate regulations  
20 under this title, the Attorney General, in con-  
21 sultation with the Secretary, may promulgate  
22 such regulations as are necessary to carry out  
23 the Attorney General’s responsibilities under  
24 this paragraph and subsection (b)(9), including  
25 regulations regarding the security, confidential-



ity, accuracy, use, destruction, and dissemination of information, audits and recordkeeping, and the imposition of fees.

“(F) REPORT.—Not later than 2 years after the date of enactment of the “Long-Term Care Patient Protection Act of 1998”, the Attorney General shall submit a report to Congress on the number of requests for searches and exchanges of records made under this section and the disposition of such requests.”.

(2) MEDICARE PROGRAM.—

(A) EXPANSION OF STATE REGISTRY TO COLLECT INFORMATION ABOUT SKILLED NURSING FACILITY EMPLOYEES OTHER THAN NURSE AIDES.—Section 1819, as amended by section 2(b), is amended—

(i) in subsection (e)(2)—

(I) in the paragraph heading, by striking “NURSE AIDE REGISTRY” and inserting “SKILLED NURSING CARE EMPLOYEE REGISTRY”;

(II) in subparagraph (A)—

(aa) by striking “By not later than January 1, 1989, the” and inserting “The”;

1 (bb) by striking “a registry  
2 of all individuals” and inserting  
3 “a registry of (I) all individuals”;  
4 and

5 (cc) by inserting before the  
6 period “, and (II) all other  
7 skilled nursing facility employees  
8 with respect to whom the State  
9 has made a finding described in  
10 subparagraph (B)”;

11 (III) in subparagraph (B), by  
12 striking “involving an individual listed  
13 in the registry” and inserting “involv-  
14 ing a skilled nursing facility em-  
15 ployee”; and

16 (IV) in subparagraph (C), by  
17 striking “nurse aide” and inserting  
18 “skilled nursing facility employee or  
19 applicant for employment”; and

20 (ii) in subsection (g)(1)—

21 (I) in subparagraph (C)—

22 (aa) in the first sentence, by  
23 striking “nurse aide” and insert-  
24 ing “skilled nursing facility em-  
25 ployee”; and

1 (bb) in the third sentence,  
 2 by striking “nurse aide” each  
 3 place it appears and inserting  
 4 “skilled nursing facility em-  
 5 ployee”; and

6 (II) in subparagraph (D), by  
 7 striking “nurse aide” each place it ap-  
 8 pears and inserting “skilled nursing  
 9 facility employee”.

10 (B) STATE AND FEDERAL REQUIREMENT  
 11 TO CONDUCT BACKGROUND CHECKS.—Section  
 12 1819(e), as amended by section 2(b), is amend-  
 13 ed by adding at the end the following new para-  
 14 graph:

15 “(7) STATE AND FEDERAL REQUIREMENTS  
 16 CONCERNING CRIMINAL BACKGROUND CHECKS ON  
 17 SKILLED NURSING FACILITY EMPLOYEES.—

18 “(A) IN GENERAL.—Upon receipt of a re-  
 19 quest by a skilled nursing facility pursuant to  
 20 subsection (b)(9) that is accompanied by the in-  
 21 formation described in subclauses (II) through  
 22 (IV) of subsection (b)(9)(A)(ii), a State, after  
 23 checking appropriate State records and finding  
 24 no disqualifying information (as defined in sub-  
 25 section (b)(9)(E)), shall submit such request

1 and information to the Attorney General and  
2 shall request the Attorney General to conduct a  
3 search and exchange of records with respect to  
4 the individual as described in subparagraph  
5 (B).

6 “(B) SEARCH AND EXCHANGE OF  
7 RECORDS BY ATTORNEY GENERAL.—Upon re-  
8 ceipt of a submission pursuant to subparagraph  
9 (A), the Attorney General shall direct a search  
10 of the records of the Federal Bureau of Inves-  
11 tigation for any criminal history records cor-  
12 responding to the fingerprints or other positive  
13 identification information submitted. The Attor-  
14 ney General shall provide any corresponding in-  
15 formation resulting from the search to the  
16 State.

17 “(C) STATE REPORTING OF INFORMATION  
18 TO NURSING FACILITY.—Upon receipt of the in-  
19 formation provided by the Attorney General  
20 pursuant to subparagraph (B), the State  
21 shall—

22 “(i) review the information to deter-  
23 mine whether the individual has any con-  
24 viction for a relevant crime (as defined in  
25 subsection (b)(9)(E)); and

1 “(ii) report to the skilled nursing fa-  
2 cility the results of such review.

3 “(D) FEES FOR PERFORMANCE OF CRIMI-  
4 NAL BACKGROUND CHECKS.—

5 “(i) AUTHORITY TO CHARGE FEES.—

6 “(I) ATTORNEY GENERAL.—The  
7 Attorney General may charge a fee to  
8 any State requesting a search and ex-  
9 change of records pursuant to this  
10 paragraph and subsection (b)(9) for  
11 conducting the search and providing  
12 the records. The amount of such fee  
13 shall not exceed the lesser of the ac-  
14 tual cost of such activities or \$50.  
15 Such fees shall be available to the At-  
16 torney General, or, in the Attorney  
17 General’s discretion, to the Federal  
18 Bureau of Investigation, until ex-  
19 pended.

20 “(II) STATE.—A State may  
21 charge a skilled nursing facility a fee  
22 for initiating the criminal background  
23 check under this paragraph and sub-  
24 section (b)(9), including fees charged  
25 by the Attorney General, and for per-

1           forming the review and report re-  
2           quired by subparagraph (C). The  
3           amount of such fee shall not exceed  
4           the actual cost of such activities.

5           “(ii) TREATMENT OF FEES FOR PUR-  
6           POSES OF COST REPORTS.—An entity may  
7           not include a fee assessed pursuant to this  
8           subparagraph as an allowable item on a  
9           cost report under this title or title XIX.

10          “(iii) PROHIBITION ON CHARGING AP-  
11          PLICANTS OR EMPLOYEES.—An entity may  
12          not impose on an applicant for employment  
13          or an employee any charges relating to the  
14          performance of a background check under  
15          this paragraph.

16          “(E) REGULATIONS.—In addition to the  
17          Secretary’s authority to promulgate regulations  
18          under this title, the Attorney General, in con-  
19          sultation with the Secretary, may promulgate  
20          such regulations as are necessary to carry out  
21          the Attorney General’s responsibilities under  
22          this paragraph and subsection (b)(9), including  
23          regulations regarding the security, confidential-  
24          ity, accuracy, use, destruction, and dissemina-

(c) ESTABLISHMENT OF NATIONAL REGISTRY OF ABUSIVE NURSING FACILITY WORKERS.—Title XI of the Social Security Act is amended by adding after section 1128E the following new section:

16       “SEC. 1128F. (a) IN GENERAL.—The Secretary shall  
17   establish a national data collection program for the report-  
18   ing of information described in subsection (b), with access  
19   as set forth in subsection (c), and shall maintain a data-  
20   base of the information collected under this section.

25 “(c) ACCESS TO REPORTED INFORMATION.—

1           “(1) AVAILABILITY.—The information in the  
2       database maintained under this section shall be  
3       available, pursuant to procedures maintained under  
4       this section, to—

5           “(A) Federal and State government agen-  
6       cies;

7           “(B) nursing facilities participating in the  
8       program under title XIX and skilled nursing fa-  
9       cilities participating in a program under title  
10      XVIII; and

11          “(C) such other persons as the Secretary  
12      may specify by regulation,  
13      but only for the purpose of determining the suit-  
14      ability for employment in a nursing facility or skilled  
15      nursing facility.

16          “(2) INFORMATION.—The information in the  
17      database shall be exempt from disclosure under 5  
18      U.S.C. 552.

19          “(3) FEES FOR DISCLOSURE.—

20           “(A) IN GENERAL.—The Secretary may es-  
21      tablish or approve reasonable fees for the dis-  
22      closure of information in such database. The  
23      amount of such a fee shall be sufficient to re-  
24      cover the full costs of operating the database.  
25      Such fees shall be available to the Secretary or,



1 in the Secretary’s discretion, to the agency des-  
2 ignated under this section to cover such costs.

3 “(B) AVAILABILITY OF FEES.—Fees col-  
4 lected pursuant to this subsection shall remain  
5 available until expended, in the amounts pro-  
6 vided in appropriation acts, for necessary ex-  
7 penses related to the purposes for which the  
8 fees were assessed.

9 “(C) TREATMENT OF FEES FOR PURPOSES  
10 OF COST REPORTS.—An entity may not include  
11 a fee assessed pursuant to this subsection as an  
12 allowable item on a cost report under this title  
13 or title XIX.

14 “(D) PROHIBITION ON CHARGING APPLI-  
15 CANTS OR EMPLOYEES.—An entity may not im-  
16 pose on an applicant for employment or an em-  
17 ployee any charges relating to the registry es-  
18 tablished and maintained under this section.”.

19 **SEC. 4. EFFECTIVE DATE.**

20 The provisions of and amendments made by this Act  
21 shall be effective on and after the date of enactment, with-  
22 out regard to whether implementing regulations are in ef-  
23 fect.

